

BEFORE THE BOARD OF
NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

IN THE MATTER OF APPLICATION FOR
RESERVATION OF WATER NO. 8476-r43BJ
BY THE CITY OF BIG TIMBER

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FINDINGS OF FACT AND CON-
CLUSIONS OF LAW OF APPLI-
CATION NO. 8476-r43BJ

The above-entitled matter came on regularly for hearing starting on or about August 8, 1977, in Billings, Montana, before the Montana Board of Natural Resources and Conservation and its duly appointed Hearing Examiner, James Driscoll. The Applicant appeared by and through its counsel of record, James Tulley. The Montana Department of Natural Resources and Conservation appeared by and through its counsel of record, Richard Gordon. The Montana Department of Health and Environmental Sciences appeared by and through its counsel of record, Mona Jamison. The Montana Department of Fish and Game appeared by and through its counsel of record, Clayton Herron. The fourteen applicant conservation districts appeared by and through their counsel of record, Gary Spaeth. The City of Billings appeared by and through its counsel of record, Calvin Calton. The Montana Power Company appeared by and through its counsel of record, Robert Woodahl. Witnesses were duly sworn, and oral and documentary evidence was introduced.

The Board, having read and fully considered the complete record, makes the following Findings of Fact and Conclusions of Law relating to the City of Big Timber, Application No. 8476-r43BJ:

FINDINGS OF FACT

Background Finding

1. The City of Big Timber has applied for a reservation of 4,483 acre-feet of water per year (af/y) with a maximum diversionary flow rate of 6.19 cubic feet per second (cfs) from the Boulder River, a tributary of the Yellowstone River, to be used for municipal water supply purposes for the year 2000. (Application No. 8476-r43BJ).

Findings Related to the Purpose of the Reservation (89-890(3)(a))

2. The purpose of the reservation is to ensure an adequate municipal water supply for the foreseeable future for the City of Big Timber (City of Big Timber, addendum to Application No. 8476-r43BJ, p. 1).

3. It is established to the satisfaction of the Board that a purpose of the reservation has been shown (Finding 2).

Findings Related to the Need for the Reservation (89-890(3)(b))

4. A reservation of water is needed because it will secure a priority date for future developments that is earlier than the priority dates such developments would have if permits were obtained immediately before construction or use began (Draft EIS, Vol. I, p. 1).

5. A reservation of water is needed because competition for Yellowstone Basin water exists (City of Big Timber, addendum to Application No. 8476-r43BJ, p. 1; Tr. Vol. 1, following p. 92, Testimony of William Wenzel, p. 2).

6. A reservation of water is needed because it would be an assurance that the City of Big Timber would have an adequate quantity of water available from the Boulder River for the City of Big Timber's municipal water supply (Tr. Vol. 1, following p. 92, Testimony of Wenzel, p. 2).

7. A reservation of water is needed because a water right by permit would not meet all of the needs of the City of Big Timber in that the water being applied for by reservation is not presently needed (City of Big Timber, addendum to Application No. 8476-r43BJ, p. 1).

8. A reservation of water is needed because local voters will not approve a bond issue for construction of additional water supply facilities until the expected need materializes (City of Big Timber, addendum to Application No. 8476-r43BJ, pp. 1 and 2).

9. The City of Big Timber has experienced growth since 1970 as evidenced by the increase of trailer courts, individual housing starts and apartment units, as well as by the increase of community businesses. (Tr. Vol. 1, Testimony of Oscar Stephens).

10. The development of oil, gas, and metallic minerals in the Big Timber area, which would lead to further growth of the City of Big Timber, is possible (City of Big Timber, addendum to Application No. 8476-r43BJ, pp. 3 and 4; Tr. Vol. I, Cross of Stephens, p. 91).

11. The City of Big Timber can expect an increased population with associated water needs (Tr. Vol. 1, following p. 86, Testimony of Stephens, p. 1).

12. The City of Big Timber will need an increased water supply in the future to meet its expected growth (City of Big Timber, addendum to Application No. 8476-r43BJ, p. 1).

13. It is established to the satisfaction of the Board that the need for a reservation of water has been shown (Findings 4 through 12).
Findings Related to Amount of Water Necessary for the Purpose of the Reservation (89-899(3)(c))

14. The 1970 population of the City of Big Timber was 1,592

(Draft EIS, Vol. I, p. 174; Tr. Vol. I, following p. 86, Testimony of Stephens, p. 1).

15. The 1977 population of the City of Big Timber is estimated to be 1,700 (Tr. Vol. I, following p. 86, Testimony of Stephens, p. 1).

16. The amount of the City of Big Timber's reservation request is based on a design population projection of 3,000 for the year 2000 (City of Big Timber, following Table 3 of Exhibit A submitted with Application No. 8476-r43BJ, Tr. Vol. I, Cross of Wenzel, p. 95).

17. The average municipal per capita water use rate in the City of Great Falls in 1964 was 200 gallons per capita per day (gpcd) (City of Big Timber, Table 4 of Exhibit A submitted with Application No. 8476-r43BJ).

18. The City of Big Timber has utilized a per capita water use rate of 1,000 (gpcd), plus an additional one million gallons per day for industrial use, in calculating its request, (City of Big Timber, addendum to Application No. 8476-r43BJ, p. 2), but there is insufficient evidence to support this figure.

19. A 250 gallon per capita per day is a reasonable average water use rate for the City of Big Timber.

20. With a population of 1,700 and an average use rate of 250 gpcd, the City of Big Timber's estimated water use in the year 1977 is 477 af/y (Findings 15 and 19).

21. With a population of 3,000 and an average use rate of 250 gpcd, the City of Big Timber would need 842 af/y in the year 2000 (Findings 16 and 19).

22. A reservation that would provide sufficient water to meet the City of Big Timber's projected increased requirements to the

year 2000 is the difference between the projected requirements in 2000 (842 af/y) and the existing water usage (477 af/y) (Findings 20 and 21), and this difference is 365 af/y.

23. It is established to the satisfaction of the Board that 365 af/y is the amount of water necessary for the purpose of the reservation to the year 2000 (Findings 14 through 22).

Findings Related to the Public Interest (89-890(3)(d))

24. Adoption of a reservation for the City of Big Timber would have a negligible environmental impact (Draft EIS, Vol. I, pp. 173 and 174).

25. Adoption of a reservation for the City of Big Timber would not reduce the flow of the Yellowstone River significantly (Draft EIS, Vol. I, p. 174).

26. Adoption of a reservation for the City of Big Timber would contribute to the public health and safety (City of Big Timber, addendum to Application No. 8476-r43BJ, p. 2).

27. Adoption of a reservation for the City of Big Timber would provide economic benefits and contribute to community planning and orderly growth and development (City of Big Timber, addendum to Application No. 8476-r43BJ, p. 2; Tr. Vol. I, following p. 86, Testimony of Stephens, p. 3; Tr. Vol I, following p. 92, Testimony of Wenzel, p. 2).

28. It is established to the satisfaction of the Board that the reservation of 365 af/y from the Boulder River, a tributary of the Yellowstone River, for the City of Big Timber for municipal water supply use is in the public interest, and that there will be progress toward accomplishment of the purpose of the reservation with reasonable diligence in accordance with an established plan (Findings 24 through 27; City of Big Timber, Application No. 8476 r43BJ).

CONCLUSIONS OF LAW

1. Chapter 8, Title 39, R.C.M. 1947, and in particular, Section 89-890, R.C.M. 1947, authorize the adoption by the Montana Board of Natural Resources and Conservation of orders reserving water to qualified applicants for reservation of water.

2. If ordered adopted, a reservation must be ordered adopted in accordance with Chapter 8, Title 39, R.C.M. 1947, and any rules adopted thereunder.

3. The Applicant, City of Big Timber, is a political subdivision of the State of Montana and as such is entitled to apply to reserve waters within the State of Montana in accordance with 89-890, R.C.M. 1947, and any rules adopted thereunder.

4. All pertinent statutes and rules of the State of Montana have been adhered to in review of this reservation application, both by the Montana Department of Natural Resources and Conservation and by the Montana Board of Natural Resources and Conservation.

5. Based upon the above Findings of Fact, and specifically based upon any condition, limitation, or modification of the full application appearing in said Findings, all pertinent criteria delineated in Section 89-890, R.C.M. 1947, and any rules adopted thereunder providing for the adoption of an order reserving water have been met.

6. Nothing found herein has bearing upon the status of water rights claimed by the Applicant other than those herein newly applied for, nor does anything found herein have bearing on the status of claimed water rights of any other party except in relation to those rights herein newly applied for, to the extent necessary to reach a conclusion herein.